



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 16, 2003

Mr. Marc J. Schnall  
Soules & Wallace, P.C.  
Frost Bank Tower  
100 W. Houston Street, Suite 1500  
San Antonio, Texas 78205-1433

OR2003-9071

Dear Mr. Schnall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192882.

The City of Olmos Park (the "city"), which you represent, received a request for information regarding a particular police report. You state that "the initial offense report . . . is being provided to [the requestor]" and claim that other requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Because your claim regarding section 552.108 is broader, we address it first. This section provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]

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<sup>1</sup>In addition to the responsive information, you have submitted records that were created after this request for information was received. Because this information, which we have marked, is not encompassed by this request, we do not address it in this ruling.

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that *did not* result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (2) (emphasis added). Generally speaking, subsection 552.108(a)(1) is mutually exclusive of subsection 552.108(a)(2). Subsection 552.108(a)(1) protects information that pertains to a specific pending criminal investigation or prosecution. In contrast, subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication.

You state that the information you seek to withhold under this exception relates to an investigation

for which charges *have not* been filed. The investigation of the case is *pending* and has not resulted in a conviction or deferred adjudication. Accordingly, we believe that all of the remaining information requested should be withheld since the release of the information would interfere with the detection, investigation, or prosecution of crime.

(Emphasis added.) Based on the quoted language, we understand you to assert that the submitted information pertains to an on-going criminal investigation.

We note, however, that this report concerns allegations of theft that occurred on June 22, 1997 and involved property that is valued at \$20,000 or more but less than \$100,000. The statute of limitations for the offense described in this report is five years from the date of commission of the offense. *See* Crim. Proc. Code art. 12.01(4)(A) (providing limitation period of five years for theft); Penal Code § 31.03(e)(5) (providing that theft is felony of third degree if property's value is \$20,000 or more but less than \$100,000) (f), (providing that such theft is felony of second degree if actor (1) was public servant at time of offense and property appropriated came into actor's custody, possession, or control by virtue of status as public servant; or (2) was in contractual relationship with government at time of offense and property appropriated came into actor's custody, possession, or control by virtue of contractual relationship). More than five years elapsed between June 22, 1997 and the date the city received this request for information. You do not inform this office that any criminal charges were filed within the limitations period, nor have you otherwise explained how or why release of this information would interfere with the investigation of an offense for which the statute of limitations has run. Because you have not shown the applicability of section 552.108(a)(1), we conclude that you may not withhold the submitted information on this basis.

You point out, however, that the submitted information includes criminal history record information ("CHRI") for numerous individuals. Section 552.101 of the Government Code

excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” and encompasses laws that make CHRI confidential. CHRI “means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions” but does not include “driving record information maintained by [the Department of Public Safety (“DPS”)] under Subchapter C, Chapter 521, Transportation Code.” Gov’t Code § 411.082(2).

Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”), (2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). Under chapter 411 of the Government Code, a criminal justice agency may obtain CHRI from DPS or from another criminal justice agency. *Id.* §§ 411.083(b)(1), .087(a)(2), .089(a). However, CHRI so obtained is confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). We have marked the information that constitutes CHRI and must be withheld under section 552.101.<sup>2</sup>

As you point out, the requested documents also include information obtained in the course of conducting a polygraph examination, the release of which is prohibited by law. Section 1703.306 of the Occupations Code provides that “a person for whom a polygraph examination is conducted . . . may not disclose information acquired from a polygraph examination” except to certain categories of people, including “the examinee or any other person specifically designated in writing by the examinee.” We have marked the information that must be withheld pursuant to section 552.101 and section 1703.306.

We also note that the submitted information includes Texas-issued motor vehicle record information. Section 552.130 of the Government Code excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.” Pursuant to section 552.130, the city must withhold the information we have marked.

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<sup>2</sup>We note that the requestor can obtain his own CHRI from DPS. *See* Gov’t Code § 411.083(b)(3).

In summary, we have marked information that the city must withhold pursuant to sections 552.101 and 552.130 of the Government Code. The remaining information must be released to this requestor.<sup>3</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

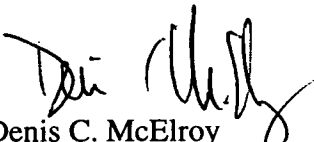
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<sup>3</sup>Some of the records marked for release contain confidential information that is not subject to release to the general public. See Gov't Code § 552.352. However, the requestor in this instance has a special right of access to the information. See Gov't Code § 552.023. Therefore, if the city receives a future request for this information from an individual other than the requestor or his authorized representative, the city should again seek our decision.

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/lmt

Ref: ID# 192882

Enc. Submitted documents

c: Mr. Tommy A. Romo, Jr.  
11711 Wall Street # 10202  
San Antonio, Texas 78230  
(w/o enclosures)